

## NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-09)

<b>OAL FILE NUMBERS</b>	NOTICE FILE NUMBER <b>Z-</b>	REGULATORY ACTION NUMBER	EMERGENCY NUMBER <b>2010-0303-01EE</b>
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	
AGENCY WITH RULEMAKING AUTHORITY Food and Agriculture			AGENCY FILE NUMBER (if any) PH10024

2010 MAR -3 AM 11:43  
OFFICE OF  
ADMINISTRATIVE LAW

**A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)**

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
<b>OAL USE ONLY</b>	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

**B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)**

1a. SUBJECT OF REGULATION(S) Mediterranean Fruit Fly Interior Quarantine	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2009-0820-02 E
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT AMEND 3406(b) REPEAL
TITLE(S) 3	

3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input checked="" type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify) _____	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)			
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Effective 30th day after filing with Secretary of State	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal	
<input type="checkbox"/> Other (Specify) _____			

7. CONTACT PERSON Stephen S. Brown	TELEPHONE NUMBER (916) 654-1017	FAX NUMBER (Optional) (916) 654-1018	E-MAIL ADDRESS (Optional) sbrown@cdfa.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE 3/3/10
TYPED NAME AND TITLE OF SIGNATORY Nathan Dechoretz, Deputy Secretary for Administration and Finance	

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Amend Section 3406(b) to read:

(b) Quarantine Area. The area under quarantine for Mediterranean fruit fly in California is:

~~(1) In the County of San Diego: Beginning at the intersection of Navajo Road and State Highway 125; then, starting southerly along said highway to its intersection with US Interstate 8; then, starting northeasterly along said interstate to its intersection with El Cajon Boulevard; then, northeasterly along said boulevard to its intersection with W Chase Avenue; then, starting southeasterly along said avenue to its intersection with E Chase Avenue; then, starting easterly along said avenue to its intersection with State Highway 54; then, starting southerly along said highway to its intersection with Willow Glen Drive; then, starting southeasterly along said drive to its intersection with Steele Canyon Road; then, starting southeasterly along said road to its intersection with State Highway 94; then, starting northeasterly along State Highway 94 to its intersection with Melody Road; then, westerly along Melody Road to its intersection with Proctor Valley Road; then, starting westerly along said road to its intersection with Hunte Parkway; then, starting southerly along Hunte Parkway to its intersection with Otay Lakes Road; then, starting northwesterly along said road to its intersection with Rutgers Avenue; then, starting northwesterly along said avenue to its intersection with E H Street; then, starting southwesterly along said street to its intersection with US Interstate 805; then, starting northwesterly along said interstate to its intersection with Home Avenue; then, northeasterly along Home Avenue to its intersection with Euclid Avenue; then, northerly along Euclid Avenue to its intersection with El Cajon Boulevard; then, starting northeasterly along said boulevard to its intersection with 70<sup>th</sup> Street; then, northerly along 70<sup>th</sup> Street to its intersection with Lake Murray Boulevard; then, northeasterly along said boulevard to its intersection with Navajo Road; then, easterly along Navajo Road to the point of beginning.~~

~~(21)~~ In the Imperial Beach area of San Diego County: Continued

~~(32)~~ In the Mira Mesa area of San Diego County: Continued

(continued)

NOTE: Authority: Sections 407, 5301, 5302 and 5322, Food and Agricultural Code.

Reference: Sections 5301, 5302 and 5322, Food and Agricultural Code.

August 19, 2009

## FINDING OF EMERGENCY

The Secretary of the Department of Food and Agriculture finds that an emergency exists, and that the foregoing amendment of a regulation is necessary for an immediate action to avoid serious harm to the public peace, health, safety or general welfare, within the meaning of Government Code Section 11342.545 and Public Resources Code Section 21080. The Secretary has also determined that this emergency clearly poses such an immediate, serious harm that delaying action by providing five working days advance notice to allow public comment would be inconsistent with the public interest, within the meaning of Government Code Section 11346.1(a)(3). Further, the Secretary believes that this emergency clearly poses such an immediate, serious harm that delaying action by the Office of Administrative Law providing five calendar days advance notice to allow public comment would also be inconsistent with the public interest, within the meaning of Government Code Section 11349.6(b).

### Specific Facts Showing the Need for Immediate Action

The Department amended Section 3406(b) as an emergency action (OAL File No. 2009-0820-02 E) which was effective August 20, 2009. The Department is proposing to readopt OAL File No. 2009-0820-02 E. The Department is also proposing to incorporate by reference into this emergency action: OAL File No. 2009-0820-02 E.

The reason the Department is pursuing the readoption of this emergency rulemaking is due to the numerous emergency rulemakings it has undertaken. From August 20, 2009, the date of filing this emergency action (OAL File No. 2009-0820-02 E) the Department has subsequently had over 25 effective emergency rulemakings. The Department's Division of Plant Health and Pest Prevention Services is responsible for these emergency rulemakings and currently has two staff positions capable of working on these rulemakings and one has been in training since July 1, 2009. All rulemakings are normally charted to keep track of all legal deadlines. However, the original emergency rulemaking was not charted due to the number of emergency actions being dealt with. The original specific facts which

constituted an emergency upon the initial filing of these emergency actions are still valid. In order to prevent confusion amongst our trading partners, the removal of the Spring Valley area from the quarantine is still critical. If approved, the Department will immediately begin

Mediterranean fruit fly is a destructive insect pest which attacks the fruit of various plants including over 260 crops such as citrus, tomatoes, grapes, avocados, peaches, and cherries.

The female punctures host fruit to lay eggs which develop into larvae. The punctures admit decay organisms that may cause tissue breakdown. Larval feeding causes breakdown of fruit tissue. Fruits with egg punctures and larval feeding are generally unfit for human consumption. Pupae may be found in fruit, but normally are found in soil.

Mediterranean fruit flies were detected in the County of San Diego. In November of 2008 multiple life stages of adult Mediterranean fruit flies were detected in the El Cajon area of San Diego County. As a result, an emergency quarantine was implemented which was effective November 26, 2008. In December of 2008, additional Mediterranean fruit flies were detected in the El Cajon area away from the existing epicenter. As a result, the regulated area was expanded as an emergency action which was effective on December 18, 2008. In May of 2009, Mediterranean fruit flies were detected in the Mira Mesa area of San Diego County. As a result, the regulated area was expanded as an emergency action which was effective on June 1, 2009. Effective July 22, 2009, the Department removed approximately 105 square miles surrounding the El Cajon area of San Diego County from the regulation. The area remaining was designated as the Spring Valley area.

The United States Department of Agriculture's Animal and Plant Health Inspection Service also accepts this standard as the trigger for a quarantine response. The Food and

Agriculture Organization of the United Nations has a similar international standard established.

This amendment of Section 3406(b) will remove approximately 93 square miles of the Spring Valley area of San Diego County from the area under quarantine for Mediterranean fruit fly. The fly will be declared eradicated from this area on August 23, 2009 (Refer to memo dated August 10, 2009, from John Hooper to John Connell); therefore, it is no longer necessary to regulate the movement of hosts and possible carriers of the fly from this area effective August 23, 2009. However, based upon life cycle projections for some of flies trapped, a portions of the current regulated areas of San Diego County, Mira Mesa and Imperial Beach, still need to remain under quarantine until eradication is declared in these areas.

The quarantine area for the Spring Valley area included the initial detection sites as the epicenter and a buffer zone which extends approximately 4-1/2 miles in each direction from the epicenter. A buffer zone is necessary because the fly can spread naturally (as well as being spread artificially in infested hosts). The proposed boundary reducing the regulated area was jointly decided by the United States Department of Agriculture (USDA), the California Department of Food and Agriculture, and the San Diego County Agricultural Commissioner. The proposed quarantine area remaining is considered the minimum area around the initial detection sites which should be regulated to prevent artificial spread of Mediterranean fruit fly to noninfested areas.

This amendment will remove a portion of the quarantine area, approximately 93 square miles, surrounding the Mediterranean fruit fly infestation in the Spring Valley area of San Diego County. The remaining areas of Imperial Beach and Mira Mesa will still be under quarantine until eradication is achieved.

It is necessary to amend this regulation on an emergency basis to remove restrictions on the movement of hosts and possible carriers that are unnecessary for a portion of the quarantine on the Spring Valley area that is currently regulated.

Currently, there are numerous businesses, 60 percent of which are estimated to be small businesses, which must comply with the quarantine restrictions. These small businesses include growers, nurseries, fruit sellers/distributors/vendors and farmers' markets/community gardens/swap meets. If these unnecessary restrictions were continued, it would create an unnecessary burden on these small businesses. Commercially produced host crops, if the restrictions were continued, would have to be treated or would not be allowed movement from the areas

If these unnecessary restrictions were continued, it would create an unnecessary burden for the general public in that area. Host crops are being or will be harvested in this area soon. Those members of the public who have grown host fruits and vegetables would be required to process the commodities before the fruits and vegetables can be moved from their property or given away or they would have to unnecessarily destroy the host fruits and vegetables.

Additionally, if these unnecessary restrictions were continued, it would create an unnecessary workload upon the Department during a time of State budget crisis.

Finally, our international trading partners are keenly aware of Mediterranean fruit fly infestations in California and implement restrictions on our international trade of host commodities. Some of our major trading partners, like Japan and Mexico, will not accept any host commodities produced or packed within a regulated area. The removal of the Spring Valley area will also open US Interstate 805 as a way for host commodities to transit to Mexico without having to be placed under additional safeguards, as currently required by Mexico for transiting host commodities.

The United States Department of Agriculture (USDA) also has federal domestic quarantine restrictions which pertain to the Spring Valley area and seeks to remove them as soon as possible. These restrictions govern the interstate movement of host commodities to prevent the spread of Mediterranean fruit fly to other states. Once the State's new proposed reduced quarantine boundary becomes effective, the USDA will issue a new federal order which will mirror the State's new boundary.

Under international trade agreements, the USDA is obligated to notify any trading partner which has concerns regarding the quarantine status of Mediterranean fruit fly in the United States. Examples of countries which have specific concerns pertaining to Mediterranean fruit fly include Argentina, Australia, Brazil, Chile, Costa Rica, Japan, Mexico, New Zealand, South Africa and South Korea. Some of these countries are major trading partners involving California produced host commodities. Trade impacts may not be just limited to host commodities produced within the regulated area or even in California. For instance, Japan, Mexico and South Korea will not accept any Mediterranean fruit fly host material produced in, packed or repacked within a regulated area even if it originated in another state. Additionally, any host commodities transiting a regulated cannot unnecessarily stop and must be sealed and enclosed in a manner to exclude the possible entry of the fly into the host shipment while in the regulated area. The introduction of exotic fruit flies such as Mediterranean fruit fly is always the subject of the regional and specific bilateral trade discussions which occur between the USDA and our trading partners. The expeditious implementation and removal of exotic fruit fly quarantines is a key to ensure qualifying host commodities produced in or packed anywhere in California can also continue to move in international trade. Our trading partners are astute and have used the internet in the past to review our State regulations and compare them to the information they receive from the USDA. The continued maintenance of a State quarantine where the federal restrictions have already been removed will cause confusion amongst our trading partners.

The continued maintenance of a Mediterranean fruit fly quarantine regulation unnecessarily impacts the State and San Diego County workloads; and the movement of host



commodities in intrastate, interstate and international trade. The inability to immediately remove these quarantine restrictions will lead to confusion with our international trading partners which will believe that we have an exotic fruit fly infestation for months after we have formally declared eradication. This will likely have consequences for California-produced exotic fruit fly host material which is even produced outside the State regulated area and destined for export. Therefore, it is necessary to amend this regulation to remove a portion of the regulated area in the Spring Valley area of San Diego County as an emergency action.

#### Authority and Reference Citations

Authority: Sections 407 and 5301, 5302 and 5322, Food and Agricultural Code.

Reference: Sections 5301, 5302 and 5322, Food and Agricultural Code.

#### Informative Digest

Existing law obligates the Department of Food and Agriculture to protect the agricultural industry of California and prevent the spread of injurious pests (Food and Agricultural Code, Sections 401 and 403). Existing law provides that the Secretary may establish, maintain, and enforce such quarantine regulations as he deems necessary to circumscribe and exterminate or prevent the spread of pests to protect California's agricultural industry.

Section 3406. Mediterranean Fruit Fly Interior Quarantine.

This amendment will remove a portion of a quarantine area for Mediterranean fruit fly of approximately 93 square miles surrounding the Spring Valley area of San Diego County. The effect of the amendment is to remove the authority for the State to regulate movement of hosts and possible carriers of Mediterranean fruit fly within and from the area removed from quarantine.

#### Mandate on Local Agencies or School Districts

The Department of Food and Agriculture has determined that Section 3406 does not impose a mandate on local agencies or school districts, except that agricultural commissioners of counties under quarantine have a duty to enforce it. No reimbursement

is required under Section 17561 of the Government Code because this amendment will remove a portion of San Diego County that was in the area under quarantine; therefore, enforcement will no longer be necessary. There are no mandated costs associated with the removal of this area from the regulation.

#### Cost Estimate

The Department also has determined that no costs or savings to any state agency, no nondiscretionary costs or savings to local agencies or school districts, no reimbursable costs or savings to local agencies or school districts under Section 17561 of the Government Code, and no costs or savings in federal funding to the State will result from the proposed action.